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8 Attorneys for Plaintiff, Steve Karagiosian

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

11 OMAR RODRIGUEZ; CINDY GUILLEN-  
12 GOMEZ; STEVE KARAGIOSIAN;  
13 ELFEGO RODRIGUEZ; AND JAMAL  
14 CHILDS,

15 Plaintiffs,

16 -vs-

17 BURBANK POLICE DEPARTMENT; CITY  
18 OF BURBANK; AND DOES 1 THROUGH  
19 100, INCLUSIVE.

20 Defendants.

21 BURBANK POLICE DEPARTMENT; CITY  
22 OF BURBANK,

23 Cross-Complainants,

24 -vs-

25 OMAR RODRIGUEZ, and Individual,

26 Cross- Defendant.

CASE NO.: BC 414 602

Assigned to: Hon. Joanne B. O'Donnell, Judge  
Dept. 37

Complaint Filed: May 28, 2009

PLAINTIFF'S OPPOSITION TO  
DEFENDANT'S MOTION *IN LIMINE* NO. 1  
TO EXCLUDE EVIDENCE OF (A) THE  
DISBANDING OF SED AND PLAINTIFF  
BEING RETURNED TO PATROL AND (B)  
PLAINTIFF NOT BECOMING AN FTO

Final Status Conference:

DATE: June 8, 2011  
TIME: 9:00 a.m.  
DEPT: 37

Trial Date: June 8, 2011

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. THE DISBANDING OF THE SEG IS RELEVANT**

3 **TO PLAINTIFF'S HARASSMENT CLAIM**

4 In it's Motion *in Limine* No. 1, Defendant seeks to exclude evidence regarding the disbanding  
5 of the SED and the failure to return Plaintiff Steve Karagiosian to an FTO position. Plaintiff readily  
6 concedes that only relevant evidence is admissible during trial. If an objection is made on relevance  
7 grounds during trial, the court then will decide whether the proffered evidence is relevant to  
8 Plaintiff's active claims. Obviously, if proffered evidence is relevant only to dismissed claims, and  
9 is not relevant to any claims remaining at the time of trial, such evidence should not be admitted.  
10 However, Plaintiff's causes of action were, to some degree intertwined, and most evidence intended  
11 to be offered at trial is relevant to more than one cause of action. In fact, this very issue was recently  
12 discussed by the California Supreme Court in Roby v. McKesson Co. (2009) 47 Cal. 4<sup>th</sup> 686, which  
13 stated, "discrimination and harassment claims can overlap as an evidentiary matter... nothing  
14 prevents a plaintiff from proving these two violations with the same (or overlapping) evidentiary  
15 presentations." Roby at 709.

16 There is no point in the court proclaiming before trial that irrelevant evidence will not be  
17 admitted. Such a general statement does not provide guidance to trial counsel, and is not what  
18 motions *in limine* were designed for. Even if such an order were made, the Court would still have to  
19 decide on the relevance of any proffered evidence when it is offered at trial.

20 Consequently, Defendants' motion should be denied. At best, Defendants' concerns would  
21 entitle them to limiting instructions. As the court stated in *R&B Auto Center, Inc. V. Farmers*  
22 *Group, Inc.* (2006) 140 Cal.App.4th 327:

23 "The moving party's concerns that the other party may be trying to use evidence for an  
24 improper purpose or in a way that may be unduly prejudicial can be addressed by limiting  
25 instructions, without taking away the other party's hallowed right to a jury trial. (Citation.)"  
26 (*Id.*, at p.333.)

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1                                    **II. DEFENDANT HAS FAILED TO SHOW ANY**  
2                                    **REAL PROBABILITY OF UNDUE PREJUDICE**

3            Defendants argument that such evidence should be excluded because it would be unduly  
4 prejudicial is unpersuasive. *Bihun v. AT&T Information Systems, Inc.*(1993) 13 Cal. App. 4th 976,  
5 was a sexual harassment action in which the defendant moved to exclude evidence of his  
6 relationships with women at work on the grounds that such evidence was unduly prejudicial under  
7 Evidence code §352. The court disagreed, stating:

8            While the challenged evidence may have supported the testimony of [plaintiffs], it is not  
9 "unduly prejudicial" for that reason. "The 'prejudice' referred to in Evidence Code section 352  
10 applies to evidence which uniquely tends to evoke an emotional bias against defendant as an  
11 individual and which has very little effect on the issues. . . . 'Prejudicial' is not synonymous  
12 with 'damaging.' " (People v. Yu (1983) 143 Cal.App.3d 358, 377 [191 Cal.Rptr. 859].) We  
13 fail to see how a plaintiff can prosecute an action for sexual harassment against a corporate  
14 employer without introducing evidence of sexual harassment by an employee. To say this  
15 evidence is unduly prejudicial because it "brands" the employee as an "harasser" is like  
16 saying evidence the defendant committed a murder is unduly prejudicial because it "brands"  
17 the defendant as a "murderer."

18            (*Bihun* , *supra*, at pp. 989-990, disapproved on other grounds in *Lakin v. Watkins Associated*  
19 *Industries* (1993) 6 Cal. 4th 644, 664.)

20            Likewise, in the case at bar, evidence that the SED was disbanded or the Officer Karagiosian  
21 was not returned to an FTO position is not unduly prejudicial just because it support Plaintiff's claim  
22 that he was harassed for being an Armenian. It is also not prejudicial just because is it supports  
23 Plaintiff's claims that Defendants failed to take reasonable steps to prevent harassment.

24            Defendants' motion should therefore be denied.

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1 **III. CONCLUSION**

2 For all the foregoing reasons, Plaintiff respectfully requests that Defendants' Motion *in*  
3 *Limine* No. 1 be denied.

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5 DATED: May 20, 2011

LAW OFFICES OF RHEUBAN & GRESEN

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8 By: Steven M. Cischke  
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